

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Rev. January 2006

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LIBERTY MUTUAL FIRE INSURANCE COMPANY,
and as subrogee of JEFFREY AVEIS,

Plaintiff(s),

- against -

CIVIL CASE DISCOVERY PLAN
AND SCHEDULING ORDER

07 Civ. 3352 (CLB) (LMS)

HEAT, LLC, d/b/a PEERLESS BOILERS HEAT, LLC
and BOTTINI FUEL OIL CORPORATION,

Defendant(s).

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This Court requires that this case shall be ready for trial on or after December 12, 2007.

The following Civil Case Discovery Plan and Scheduling Order is adopted, after consultation with counsel for the parties, pursuant to Rules 26(f) and 16 of the Federal Rules of Civil Procedure.

The case (is) (is not) to be tried to a jury.

Joinder of additional parties must be accomplished by 7-22-07.Amended pleadings may be filed until 7-22-07.**Discovery:**1. Interrogatories are to be served by all counsel no later than 7-31-07, and responses to such interrogatories shall be served within thirty (30) days thereafter. The provisions of Local Civil Rule 33.3 (shall) (shall not) apply to this case.2. First request for production of documents, if any, to be served no later than 7-31-07.3. Depositions to be completed by 10/31/07.

- a. Unless counsel agree otherwise or the Court so orders, depositions are not to be held until all parties have responded to any first requests for production of documents.
- b. Depositions shall proceed concurrently.
- c. Whenever possible, unless counsel agree otherwise or the Court so orders, non-party depositions shall follow party depositions.
- d. If the defense of qualified immunity from suit as a matter of law has been or will be asserted by any defendant(s) with respect to any claim(s) in the case, counsel for any such defendant(s) shall, within thirty (30) days of this order depose plaintiff(s) at least concerning all facts relevant to the issue of qualified immunity. Within thirty (30) days thereafter defendant(s) shall serve consistent with Local Rule 6.1 and file a motion under Rule 12(c) or Rule 56, returnable on a date posted in

the New York Law Journal by Judge Brieant for hearing motions. The motion shall, in the absence of agreement of counsel, be limited to the issue of qualified immunity, and plaintiff(s) version of the events shall be assumed true for purposes of the motion. **Failure to comply with this provision of this Order shall operate as a waiver of the opportunity to resolve the issue of qualified immunity by motion prior to trial.**

4. Any further interrogatories, including expert interrogatories, to be served no later than 9-30-07.
5. Requests to Admit, if any to be served no later than 9-30-07.
6. Additional provisions relating to discovery agreed upon by counsel for the parties (are) (are not) attached and made a part hereof.
7. All discovery is to be complete by 12/11/07.

Dispositive motions, if any, must be served on notice as required by Local Civil Rule 6.1, and must be returnable before the Court on a published motion day, no later than three weeks before the ready for trial date.

Next Case Management Conference 12/14/07 9:00.
(This date will be set by the Court at the first conference)

Joint Pretrial Order is required only if counsel for all parties agree that it is desirable, or the Court so orders.

This case has been designated to the Hon. Lisa Margaret Smith, United States Magistrate Judge at White Plains for discovery disputes if the Court is "unavailable" and for trial under 28 U.S.C. § 636(c) if counsel execute their consent in writing.

Strict compliance with the trial readiness date will be required. This Plan and Order may not be changed without leave of the Court or the assigned Magistrate Judge acting under a specific reference order.

Upon signing a Consent for Trial Before a United States Magistrate Judge, the Magistrate Judge will establish an agreed date certain for trial and will amend this Plan and Order to provide for trial readiness consistent with that agreed date.

SO ORDERED.

Dated: White Plains, New York

June 22, 2007

Charles L. Brieant
Charles L. Brieant, U.S.D.J.